IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8663 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RIJCO.OPHSG.SOC.LTD - Petitioner(s)

Versus

DDO & 1 - Respondent(s)

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Appearance :

MR PS CHAMPANERI for Petitioner(s) : 1,
MR MR MENGADE ASST OVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment

and order passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad dated 31.1.1989 passed in Revision Application No.15 of 1988 in dismissing the same and confirming the order passed by the District Development Officer, Gandhinagar dated 21.3.1988. The petitioner has also challenged the judgment and order passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat dated 27.2.1989 passed in Revision Application No.14 of 1988 in dismissing the same and confirming the order passed by the District Development Officer, Gandhinagar dated 21.3.1988 in cancelling the Non Agricultural Use Permission (“N.A.Permission” for short).

2. The dispute is with regard to the N.A.Permission granted with respect to the land bearing Survey No.99 and Survey No.100 of village Koba, Taluka and District Gandhinagar. The petitioner has purchased the land bearing Survey No.99 by registered sale deed dated 23.6.1987 and had also purchased the land bearing Survey No.100 paiki of village Koba by

registered sale deed dated 19.3.1982. As the petitioners society wanted to use the said lands for non agricultural use, it had applied for the same and N.A.Permission was granted by the District Panchayat, Gandhinagar. It appears that the said orders were subject to certain conditions and one of the conditions was to start the construction within six months and to complete the same within three years. It is the case on behalf of the petitioners that they have applied for permission to the Gram Panchayat, Koba within the stipulated time so that it can start construction and the Koba Gram Panchayat granted permission also, however, the said permission granted by Koba Gram Panchayat came to be suspended by the Taluka Development Officer by taking the same under suo motu review and therefore, the petitioner could not start construction within period of six months. The District Development Officer, Gandhinagar initiated the proceedings for cancellation of N.A.Permission on the ground that there is breach of condition of N.A.Permission by not starting construction within period of six months and after giving an opportunity to the petitioner, the District

Development Officer by order dated 21.3.1988 cancelled and / or set aside the said N.A.Permission on the ground that there is breach of condition of N.A.Permission. Being aggrieved and dissatisfied with the aforesaid two orders passed by the District Development Officer in cancelling the N.A.Permission with regard to the land bearing Survey No.99 and 100 paiki situated at village Koba, the petitioner has preferred the revision application being Revision Application Nos.14 as well as 15 of 1988 before the State Government and the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat by its judgment and order dated 27.2.1989 and 31.1.1989 dismissed the said revision applications confirming the orders passed by the District Development Officer, Gandhinagar in cancelling the N.A.Permission. Being aggrieved and dissatisfied with the aforesaid judgment and orders passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat by its judgment and order dated 27.2.1989 and 31.1.1989 passed in Revision Application Nos.14 of 1988 and 15 of 1988, the petitioner has preferred the present special civil

application under Articles 226 and 227 of the Constitution of India.

3. It is required to be noted that as such, the petitioner was required to file two separate and different petitions as the petitioner has challenged the judgment and orders passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat passed in two revision applications, however, the present Special Civil Application is of the year 1989 and the same is admitted by this Court, this Court is considering the same on merits.

4. Shri P.S.Champaneri, learned advocate appearing on behalf of the petitioner has submitted that the District Development Officer, Gandhinagar has mechanically cancelled the N.A.Permission on the ground that there is breach of condition of N.A.Permission inasmuch as the petitioner has not started construction within a period of six months. However, the said authority has not considered the fact that it was beyond the control of the petitioner to put up construction within six months as the

Development Permission (Raja Chhithi) granted by the Koba Gram Panchayat was suspended by the Taluka Development Officer, Gandhinagar and therefore, the petitioner could not start and put up construction within six months and in the mean time, show cause notice came to be issued by the District Development Officer. Shri P.S.Champaneri, learned advocate for the petitioner has relied upon the following decisions in support of his submission to contend that the condition of starting construction within stipulated time and to complete the construction within stipulated time, is not mandatory and the authority has to consider justification for not putting up construction within stipulated time as mentioned in N.A.Permission. Decisions relied upon by Shri Champaneri, learned advocate for the petitioner are as under :

[i] Dahyabhai Laldas (Deceased) through his heirs and legal representatives : Bhikhubhai Dahyabhai Patel and others vs. State of Gujarat and another, 1997 (2) GLH 633;

[ii] Jayantibhai Babaldasbhai Darji Through its Power of Attorney vs. State of Gujarat reported in (2005) 9 G.H.J. (70);

[iii] Unreported decision of this Court (Coram A.N.Divecha, J.) dated 24.7.1996 in case of Aska Co-op Housing Society Ltd. vs. State of Gujarat rendered in Special Civil Application No.4813 of 1989;

[iv] Unreported decision of this Court (Coram A.N.Divecha, J.) dated 24.7.1996 in case of Aranya Co-op Housing Society Ltd. vs. State of Gujarat rendered in Special Civil Application No.4809 of 1989;

On the premises of aforesaid facts and grounds, it is requested to allow the present Special Civil Application.

5. Shri M.R.Mengade, learned AGP has tried to support the judgment and orders passed by both the authorities below, however, he is not in position to dispute that the present case is covered by the

aforesaid four judgments rendered by the learned Single Judge of this Court.

6. Heard learned advocates appearing on behalf of the parties.

7. As held by the Hon'ble Supreme Court as well as this Court in aforesaid four decisions, the condition of starting construction within stipulated time and to complete the construction within stipulated time limit for non agriculture purpose is held to be directive and not mandatory and the Authority is required to consider the reasons for not putting up the construction within stipulated time. In the present case, as state above the petitioner society could not start construction within six months as the permission granted by Koba Gram Panchayat allowing the petitioner to put up construction, came to be suspended by the Taluka Development Officer and in the mean time, the DDO issued show cause notice for cancellation of N.A. Permission. Therefore, there is reason to believe that the circumstances were beyond the control of the petitioner-society for not

starting construction within six months, for which, no fault can be found with the petitioner.

8. For the reasons stated above, the petition succeeds. The judgment and order dated 31.1.1989 passed in Revision Application No.15 of 1988 and order passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat dated 27.2.1989 passed in Revision Application No.14 of 1988 as well as the orders passed by the DDO, Gandhinagar dated 21.3.1988 are hereby quashed and set aside.

9. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

[M.R.Shah, J.]

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